

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/09/2004

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.P. NO. 25586 OF 2004

AND

W.P.M.P. NOS. 31095 & 32504 OF 2004

AND

W.V.M.P. NO. 17191 OF 2004

V. Elangovan .. Appellant

-Vs-

1. The Home Secretary

State of Tamil Nadu

Fort St. George

Chennai 600 009.

2. The Chairman

The Tamil Nadu Pollution Control Board

Guindy, Chennai.

3. The Commissioner of Police

Egmore, Chennai 600 008.

4. A. Ganesh

5. V.D. Balaji

6. Kavingar Nandalala .. Respondents

(RR4 to 6 impleaded as per orders

of Court in WPMP No.32504/04

dated 17.9.04)

Writ Petition preferred under Article 226 of The Constitution of India
praying this Court to issue a Writ of Mandamus as stated therein.

For Petitioner : Mr. S. Doraisamy

For Respondents : Mr. R.Muthukumaraswamy, AAG

assisted by Mr.S.Gomathinayagam,

Spl. G.P. For RR1 & 3

Mr. G.Rajagopalan, SC, for RR4 to 6

Ms. Rita Chandrasekaran, for R2

:ORDER

(ORDER OF THE COURT WAS MADE BY N.DHINAKAR, J.)

The petitioner, a pro-bono public, has filed the present writ petition. The prayer in the writ petition is that this Court may issue a writ of mandamus or order or direction in the nature of writ directing the respondents to forbear from issuing permissions permitting organisation to take out processions during this year carrying large sized plaster of paris vinayagar idols and other idols made of any other chemicals and immersing such idols in sea, rivers and other water resources anywhere in Tamil Nadu.

2. When the matter was listed for hearing on 8.9.04, notice was ordered to the Addl. Government Pleader, who took notice on behalf of respondents 1 and 3. On behalf of the 2nd respondent, notice was taken by Mr.C.Ravichandran representing Ms.Rita Chandrasekaran. The authorities were also directed to implement the order passed by the First Bench of this Court in W.P. No.24417 of 2003 dated 5.9.03 and, thereafter, the matter was listed yesterday for final hearing. It was taken up at about 4.10 p.m. when the Court was about to rise for the day after the court hours. It was then represented that this may be posted on top of the list tomorrow (i.e.) on 17.9.04. Accordingly, we directed the Registry to post this as the first item in the list and it is taken up today.

3. In the affidavit filed in support of the writ petition, the petitioner has stated that formerly the festival used to be celebrated with clay idols of Vinayaga in keeping with the ancient custom, tradition and practice and over the last few years a new cultural trend has gripped the State, in the name of celebrating the festival with much fanfare spreading over a period of ten days when various organisations in the name of Hindu religion were keeping large sized Vinayagar portraits or idols made of plaster of paris coloured and polished with plastic paints, varnish, distempers and chemical powders on important road junctions and street corners. There is a further averment in the affidavit that when large plaster of paris idols of Vinayagar are taken to the Marina beach and when they are immersed by using large size mechanical cranes, there occurs large scale destruction of sea organisms and this takes place not only in the city but also in various parts of the State giving rise to communal tensions, irreparable damage to the environment leading to ecological disaster.

4. The petitioner has also alleged that in the year 2003 the Pollution Control Board has appealed to the people to celebrate the festival with eco-friendly clay idols of Vinayagar, but it went unheeded. According to the petitioner, if the idols made of plaster of paris are immersed in the sea, it causes extinction of fish and other creatures and sea organisms and if the sea organisms are not dead they are otherwise affected and that when people consume such affected fish it leads to various diseases in human beings and that respondents 1 and 2 are bound to prevent such damages.

5. A counter affidavit has been filed by the Commissioner of Police, who is the third respondent, wherein he has stated that action is being taken to beautify Marina beach to maintain environmental status and that no organisation is permitted to organise any functions, meetings, conferences,

etc., in Marina beach for the past one year with a view to maintain a clean environment. He has further submitted that the Government's instructions are that the materials used for idol making should be only clay and that toxic paints should be banned and the height of the idol should be minimised, and the said instructions have already been communicated to all the police officers with a direction to convene a meeting with the representatives of the Hindu organisations and idol makers in their respective jurisdiction bearing in mind the directions of the High Court given on 5.9.03 and that the Tamil Nadu Pollution Control Board has also directed to insist the implementation of the directions of the High Court. It is further stated that a press release as regards this matter was issued on 3.9.04 to create awareness among the public requesting them to make the idol only in clay without mixing any additives or paints.

6. The grievance of the petitioner, as could be seen from the averments in the affidavit and the prayer in the writ petition, is that there should be no permission permitting organisations to take out processions carrying large size plaster of paris Vinayagar idols and other idols made of any other materials and immersing the idols in sea, rivers or other water sources as it affects ecological system. Therefore, the intention of the petitioner is to maintain the ecological balance by preventing immersion of idols made of plaster of paris and painted with toxic substances.

7. On the above averments, we heard the counsel for the 2nd respondent and the learned counsel submitted that on 11.8.04 a committee was formed consisting of --

1)

Deputy Director
Central Institute of Plastic Engineering Technology
Guindy, Chennai - 32.

2)

Representative of Home Department
(Deputy Secretary)
Secretariat, Chennai - 9.

3)

Representative of Hindu Religious and Charitable Endowments Department
Nungambakkam, Chennai - 34.

4)

Professor
Department of Chemical Engineering
Indian Institute of Technology
Chennai - 88.

5)

CPR Environmental Education Centre
No.1, Eldams Road, Chennai - 18.

6)

The Director
Centre for Environmental Studies
Anna University, Chennai - 25.

7)
Additional Chief Environmental Engineer-II
Tamil Nadu Pollution Control Board
76, Mount Road, Guindy
Chennai - 32.

and that the Expert Committee consisting of the above seven persons discussed the main issues to specify the materials and size to be used for making idols of Lord Vinayaka to ensure that the impact of immersion of the idols in the sea and various water bodies is minimised also taking into account the recorded public opinion on the matter and to formulate the guidelines to locate immersion points at various water bodies as well as procedures to be followed during immersion.

8. After discussions the committee came to the conclusion that Vinayaka idols should be made only using traditional clay without painting since they can be safely immersed both in water sources as well as in the sea and in case paints are used, water soluble non-toxic natural dyes may be suggested and the public may be asked to avoid use of any chemical based dyes. They have also concluded that immersion in the sea should be done beyond 500 m of the low tide line and the low tide line should be identified well in advance and for the purpose of immersing the idols beyond 500 m proper motor boats with Home Guards and Coast Guards have to be organised and each disposal area should have a monitoring committee comprising of members from police, nongovernmental organisation and religious organisations to avoid pollution of water sources. The committee also decided that awareness should be created among the public to make the idols in the traditional method without mixing any additives or paints and to immerse them only in designated areas and religious leaders may be requested to appeal to the public to create an awareness highlighting the problems that could be caused due to immersion of huge painted idols using toxic colouring substances.

9. On the basis of the report of the committee, the Pollution Control Board issued a press release in vernacular in tamil dailies "Dina Thanthi", "Dinamalar" and "Dinamani" and in the English Daily "The New Indian Express" on 4.9.04 appealing to the public to use only idols made up of raw clay (not baked) for worshipping as this could be immersed in water sources and not to immerse idols painted with chemical based paints and not to immerse idols in lakes and near the seashore and that they have to be immersed at spots atleast 500 m away from the low tide line specified by the Government. The Government of Tamil Nadu was also addressed to take necessary action to identify the designated locations for immersion of Vinayaka idols and to declare the same to the public well in advance to the festival to avoid water pollution due to immersion of the idols. Similarly, the Commissioner, Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu was also addressed to take necessary action to create awareness to the public on the traditional making of Vinayaka idols well in advance of the festival to avoid water pollution due to immersion of idols.

10. Thereafter, the Commissioner of Police, Greater Chennai, convened a meeting of various religious leaders representing various organisations and they are :-

S. No.

Name and Organisation

1)

Hindu Munnani (Ramagopalan)

G.Karthikeyan, President, Chennai Dt.

2)

Vinayagar V.Murali

State Co-ordinator

Federation of Hindu Organisations.

3)

S.V.Sridharan

President

Hindu Makkal Katchi.

4)

Hindu Munnani (Jayaraman Group)

5)

Hanumanth Sena

6)

R.Kumararaja

Core Committee Member, Shiv Sena, T.N. &

Organiser, Sri Vinayagar Chaturthy Festival Committee.

7)

G.Radhakrishnan

State Organiser

Shiv Sena, T.N.

8)

M.S. Tehnmaravar

State Core Committee Member, Shiv Sena.

9)

C. Selvam

Junior Engineer

Lord Shri Vinayakar Procession Committee.

10)

Jhumar Lal

Organiser

Shree Sakthi Plaza Dealers Association.

11)

Bhogilal

Shree Ganesh Mandal.

12)

Raja Ram More

Legal Advisor

The Chinnanayakaran Traders Association.

13)

Sanjay Bagaria

Tamil Nadu Iron and Steel Producers & Merchants

Vinayaga Chathurthy Celebration Committee.

14)

M.K.Ramachandran

Choolai Merchants Sri Lord Vinayaka Pooja Committee.

15)

A. Damani

Shri Ganesh Mahotsav Mandal.

11. Thereafter, a memorandum was prepared on 4.9.04 by the Commissioner containing details referring to the directions of this Court and the meeting of the Pollution Control Board convened on 11.8.04 and the decisions taken thereon and also referring to the organisations and its leaders, who are likely to organise Vinayagar idols immersion vehicles processions, which is found mentioned in Annexure-II to the said memorandum. To the said memorandum in Annexure-III, details of incidents reported in the previous years were also enclosed and finally a direction was given to all the Assistant Commissioners, Deputy Commissioners and Joint Commissioners to convene meeting at Range, District and Zonal level respectively with the representatives of all the Hindu organisations in the respective jurisdiction before 7.9.04 to ensure peaceful conduct of Vinayagar Idols immersion processions, etc., bearing in mind the direction given by the Tamil Nadu Pollution Control Board and the previous incidents and that they should insist the organisers not to keep/install new idols this year. They were also directed to send a copy of the proceedings soon after the meeting is over.

12. Annexure-I annexed to the memorandum consists of the decisions taken in the meeting convened by the Chairperson, Tamil Nadu Pollution Control Board on 11.8.04, which we have already extracted in the earlier part of the order.

13. The counter and the report of the Pollution Control Board and the decision taken by the committee therefore show that the Pollution Control Board had taken adequate steps to see that no damage is caused to the ecological system as it has prevented immersion of idols made of plaster of paris or idols painted with toxic substances and has also directed that even idols made of clay should be immersed in sea only at the designated disposal areas at a distance of 500 m from the shore line for which arrangements have

to be made by engaging motor boats, etc., which are to be supervised by the monitoring committee.

14. On going through the decisions taken by the Pollution Control Board with which the Government has agreed and has intimated the concerned officers in the State to give effect to the decision of the Pollution Control Board, we are satisfied that the Pollution Control Board as well as the Government have taken adequate safety measures to prevent any damage to the ecological system in the State. Therefore, the petitioner cannot have any fear that by immersion of idols in sea, the same will pollute the sea and, consequently, affect the sea organisms.

15. The contentions of the counsel that there is likelihood of some untoward incidents happening during the procession is based more on surmises than on actual facts. It is no doubt true that on certain previous occasions certain incidents have happened, but they have been brought under control by the law enforcing agencies and this Court cannot pass a presumptive mandamus directing the authorities not to allow any procession on the ground that there will be untoward incidents when processions are taken. If any untoward incidents happen, we are sure the law enforcing agencies, who will be accompanying the procession will definitely take control of the situation and enforce law and order and, therefore, we are of the view that we cannot totally ban processions of Vinayagar idols.

16. The learned Special Government Pleader submits that as far as the disposal areas are concerned it will be notified well in advance so as to give the organisers sufficient time to take out processions for the purpose of immersing the idols.

17. At this stage, we cannot but refrain from mentioning the fact that one Mr. Ganesh and two others, wanted to implead themselves and Mr. G. Rajagopalan, learned senior counsel submitted before this Court that an application has been filed to implead them in the petition, and though it is numbered, it is not listed today along with this petition. Though it was numbered and not posted before us, we asked Mr. Rajagopalan as to the grievance of the interveners and according to Mr. G. Rajagopalan, learned senior counsel, the interveners submit that making of Vinayagar idols of plaster of paris will not affect the ecological system as they are not toxic in nature. We feel that the interveners ought to have come to this Court by impleading themselves in this petition at the earliest point of time if they had any materials to prove that plaster of paris is not a toxic substance, and they cannot, at the far end of the proceedings, come and insist that their views also should be heard on the subject. We cannot but lose sight of the fact that the Pollution Control Board had formed an expert committee and the committee went into the various aspects and considered the qualities of plaster of paris and the toxic nature of the paints used for painting Vinayagar idols and, thereafter, came to the decision that traditional clay idols alone should be permitted to make Vinayagar idols. We do not propose to go into this question at this hour by replacing the opinion of the committee with our opinion based on the untested contention of the interveners to allow Vinayagar idols that are made of plaster of paris to be immersed in the sea.

However, we are of the view that by the impleading petition being allowed, no prejudice would be caused and, accordingly, WPMP No.32504 of 2004 filed for impleading is allowed. However, in view of the observations made above, WVMP No.17191 of 2004 filed for vacating the stay deserves to be dismissed and, accordingly it is dismissed.

18. Taking into consideration of the above aspects and in the interest of justice, we feel that directions cannot be issued for ban on the procession of Vinayagar Idols made of pure clay and that there will be no ban for taking such Vinayagar idols in procession for which the concerned law enforcing agencies will give adequate protection and see that no untoward incidents happen during such processions and that the idols are immersed in places notified by the Government well in advance at a distance of 500 m from the shore line as suggested by the Pollution Control Board. With the above observations, this writ petition is disposed of. Consequently, WPMP No.31095 of 2004 is closed.

19. Before we part with this case, we hope and trust that the persons, who are responsible for installing the idols and taking them in procession to the sea for the purpose of immersion will also remember the true religious significance of the procession and co-operate with the law enforcing agencies to maintain law and order.

Index : Yes

Internet : Yes

GLN

To

1. The Home Secretary
State of Tamil Nadu
Fort St. George
Chennai 600 009.

2. The Chairman
The Tamil Nadu Pollution Control Board
Guindy, Chennai.

3. The Commissioner of Police
Egmore, Chennai 600 008.

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